

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20343 of 2013 &

M.P.Nos.1 of 2013 & 1 of 2014

Prince Foundations Ltd.,
rep. by its Director Mr.Rajkumar A.Kamdar .. Petitioner

Versus

1.The Director
Directorate of Town Planning
807, Anna Salai
Chennai 600 002.

2.The Member Secretary
Mamallapuram Local Planning Authority
Chenglepet.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the first respondent in No:11612/2011CB dated 12.06.2013 and quash the same and consequently direct the respondents to forbear from insisting the petitioner to submit fresh plans for approvals.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.R.Rajeswaran - R1
Special Govt.Pleader

Mr.I.Arockiasamy - R2
Govt. Advocate

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Heard Mr.R.Subramanian, learned Counsel appearing for the petitioner, Mr.R.Rajeswaran, learned Special Government Pleader, appearing for the first respondent and Mr.Mr.I.Arockiasamy , learned Government Advocate appearing accepting notice for the second respondent.

2.The petitioner has come forward with this Writ Petition for issuance of a writ of certiorarified mandamus to quash the order passed by the first respondent dated

12.6.2013, in and by which the first respondent informed the petitioner that the Planning Permission which was granted in their favour on 07.07.2010, has been cancelled by proceedings dated 02.03.2011, however, there is no power to revoke such cancellation. The end result is that the petitioner who had been granted Planning Permission on 07.07.2010 and who has gifted the Open Space Reservation Area by gift deed in favour of the second respondent and who has paid nearly a sum of Rupees one crore for obtaining the the Planning Permission, has now left with no other option except to apply afresh.

3.The petitioner applied through the second respondent on 04.01.2010 for granting of Planning Permission for construction of Apartment Complex Blocks, each having about 86 dwelling units. The order of the first respondent dated 07.07.2010, stipulates various conditions which the petitioner had complied with. Two of the conditions which are relevant for the purpose of this case are, handing over of the land which has been reserved for Open Space Reservation Area, by means of a Gift Deed and payment of various charges as demanded.

4.There has been certain correspondence between the petitioner and the respondents during the month of July 2010 to July 2011. Ultimately, by proceedings dated 22.08.2011, the second respondent informed the petitioner that the Planning Permission granted in favour of the petitioner dated 07.07.2010, has been cancelled by the first respondent by orders dated 02.03.2011 and 25.07.2011, on the ground that payments have not been made by the petitioner. The communication dated 22.08.2011 was received by the petitioner only on 10.09.2011 and without the knowledge of the same, the petitioner has addressed the second respondent on 29.08.2011, stating that they have already registered the Open Space Reservation land by executing a Gift Deed and they have forwarded the compact disk, containing the soft copy of the drawing in PDF format and they will arrange to remit the necessary fees for obtaining the Planning Permission. In the meantime, the proceedings dated 22.08.2011 was received by the petitioner on 10.09.2011 and therefore they submitted a representation on 16.09.2011, referring to the Gift Deed dated 28.08.2011 and the submission of other documents made 29.08.2011, and stated that by the time they received the order dated 22.08.2011 (received by the petitioner on 10.09.2011), they have already executed the Gift Deed and requested them to grant them thirty days time to remit the amount. In response to the said representation, the first respondent by proceedings dated 22.09.2011, accepted the request made by the petitioner and extended the time for payment till 10.10.2011. Accordingly, on 10.10.2011, by means of three Demand Drafts, the petitioner had effected payment, which has been acknowledged and there is no dispute to the

said fact. Thereafter, the second respondent by proceedings dated 31.10.2011, demanded payment of interest at the rate of 6% for the delayed period of remittance i.e. till the extended time limit and the petitioner has also remitted the said amount and the same is not in dispute.

5. Subsequently, since the petitioner did not receive the Planning Permission, they made a representation to the second respondent on 24.08.2012, for which they received a reply that the Planning Permission would be granted only after appropriate report is received from the first respondent. Thereafter, by another proceedings dated 09.11.2011, the petitioner was informed that he should remit the infrastructure and amenities charges at the revised rates. The petitioner submitted another representation on 12.11.2012, reiterating the factual position as referred supra and requested for appropriate directions to grant the Planning Permission. The said representation was followed by representations dated 26.11.2012 and 28.12.2012 and ultimately, the petitioner has been served with the impugned communication stating that there is no power for the first respondent to revoke the order of cancellation dated 22.08.2011. The correctness of the said order is challenged in this Writ Petition.

6. Heard the learned counsel for the parties and perused the materials placed on record.

7. Counter affidavit filed has been by the second respondent reiterating the stand taken in the impugned proceedings and the earlier proceedings. Thus, the petitioner has been non-suited on the ground that their Planning Permission was revoked by order dated 22.08.2011 and the first respondent has no jurisdiction to revoke such cancellation. However, under normal circumstances, this principle could be applied, but for the conduct of the respondents.

8. As pointed out earlier, the communication dated 22.08.2011 was received by the petitioner only on 10.09.2011, which has not been disputed by the second respondent in the counter affidavit. Two reasons have been pointed out for revocation of the Planning Permission viz. (i) that the petitioner has not remitted the required charges and (ii) the petitioner has not executed the Gift Deed for the Open Space Reservation land. Much prior to the receipt of the same, the petitioner has executed the Gift Deed on 22.08.2011 and the second respondent is the recipient of the Gift. Apart from that on 29.08.2011, other documents have been submitted and the petitioner would state that normally the amount is remitted only after the Open Space Reservation Land is taken over as gift. At that juncture, the order dated 22.08.2011 was served on the petitioner on 10.09.2011 and the petitioner

submitted a representation on 16.09.2011, requesting thirty days time to make the payment. The said request was favourably considered and time was granted till 10.10.2011 and the petitioner has remitted the entire amount within the said extended period. That apart, the second respondent has demanded interest for the entire period of delay and that amount has also been remitted by the petitioner.

9. Thus, the respondents having extended the time and the petitioner having paid the entire amount within the extended period and also paid the interest for the delayed remittance, as demanded, cannot be denied the Planning Permission on the ground that the first respondent had no power to revoke the cancellation dated 22.08.2011. In my view, one more factor which has to be taken into consideration is that the Planning Permission was not outrightly rejected, but, it was revoked for non payment of charges and non execution of the Gift Deed. Admittedly, both the conditions have been complied with. It cannot be stated that there was a gross delay and remittance has been made within a reasonable time after the execution of the Gift Deed. One more factor is that in the Planning Permission dated 07.07.2010, there is no specific time limit stipulated for payment of charges. The petitioner's consistent case itself is that unless and until the Open Space Reservation land is given as gift, the charges will not be received. This appears to be factually so in the instant case.

10. Hence, for all the above reasons, the respondents cannot now take a stand that the petitioner has to file a fresh application. In the light of the above discussion, the impugned order is held to be bad in law. Accordingly, the Writ Petition is allowed and the impugned order is quashed. Respondents are directed to process the petitioner's Application for Planning Permission and proceed in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Director
Directorate of Town Planning
807, Anna Salai
Chennai 600 002.

2.The Member Secretary
Mamallapuram Local Planning Authority
Chenglepet.

+2 ccs to Mr.R.Subramanian, Advocate, sr.18265
+1 cc to MR.I.Arokiasamy, Advocate, sr.18263
+1 cc to Government Pleader, sr.18379

W.P.No. 20343 of 2013

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